

Sines, et al. v. Kessler, et al., 3:17CV72, 11/23/2021

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

ELIZABETH SINES, ET AL., CIVIL CASE NO.: 3:17CV72
NOVEMBER 23, 2021, 12:11 PM
JURY TRIAL, DAY 22

Plaintiffs,

vs.

Before:
HONORABLE NORMAN K. MOON
UNITED STATES DISTRICT JUDGE
WESTERN DISTRICT OF VIRGINIA

JASON KESSLER, ET AL.,

Defendants.

APPEARANCES:

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Sines, et al. v. Kessler, et al., 3:17CV72, 11/23/2021

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Sines, et al. v. Kessler, et al., 3:17CV72, 11/23/2021

1 APPEARANCES CONTINUED:

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Sines, et al. v. Kessler, et al., 3:17CV72, 11/23/2021

1 (Proceedings commenced, 12:11 p.m.)

2 THE COURT: They have a question.

3 Since we're back on the record, I have to remind
4 everyone that under Standing Order 2020-12 and 2013-8 the
5 Court's prohibition against recording and broadcasting court
6 proceedings remains in force. Attorneys, parties, or their
7 staff, and any members of the public or press accessing this
8 proceeding today may not record or broadcast it. That means no
9 photography; no using of any video, audio, or recording device;
10 no rebroadcasting, livestreaming, or otherwise disseminating
11 any live or recorded video or audio of this proceeding.

12 As I said, I have a -- we have a note from the jury.
13 This is the question, and I've prepared an answer. I'll read
14 the question and then tell you what my answer -- proposed
15 answer would be, and you may comment.

16 "Under punitive damages for Claim 3, can we separate
17 out the amount that is awarded to individual plaintiffs?"
18 Number 275.

19 And in that -- remember, in that Claim 3 there is
20 only -- they have a thing for compensatory damages. And then
21 do you award punitive damages? And there's only one -- it's a
22 lump sum indication.

23 I proposed this answer. "No, but only those
24 plaintiffs who are awarded compensatory damages will share in
25 any punitive damages award."

Sines, et al. v. Kessler, et al., 3:17CV72, 11/23/2021

1 MS. DUNN: Your Honor, can we read the question one
2 more time, please?

3 THE COURT: Yes. I wouldn't read too much into the
4 questions.

5 MS. KAPLAN: I don't know why you'd say that, Your
6 Honor.

7 THE COURT: "Under punitive damages for Claim 3, can
8 we separate out the amount that is awarded to individual
9 plaintiffs?"

10 MS. DUNN: All right.

11 THE COURT: Did you get the answer? Do you want me
12 to read the answer?

13 MS. DUNN: Yes, please.

14 THE COURT: "No" is the answer, "but only those
15 plaintiffs who are awarded compensatory damages will share in
16 any punitive damages award."

17 MS. DUNN: Thank you, Your Honor.

18 MS. KAPLAN: We agree that's correct.

19 THE COURT: Before you all leave -- take that to the
20 jury -- all right.

21 All right. The Court received this morning a letter
22 from Mr. Cantwell stating that it has come to his attention
23 that the jury in this case had asked several questions of the
24 Court since deliberations have begun, and going forward he
25 requested the marshals bring him to the courtroom before any

Sines, et al. v. Kessler, et al., 3:17CV72, 11/23/2021

1 further issues are addressed. This is the first such note or
2 letter the Court has received from Mr. Cantwell to this effect,
3 and the Court intends to accommodate that request that he be
4 brought to the courtroom if the jury asks any further
5 questions.

6 The Court notes that at the end of the day on
7 November 18 before jury deliberations the Court told the
8 parties, quote, "I would like to have someone here all the
9 time," end quote, so there wouldn't be a problem trying to find
10 somebody on both sides if there was a jury question, and that a
11 lot of questions are sort of innocuous sometimes. It doesn't
12 require everyone to be here.

13 Mr. Spencer asked the Court, "Would you like all
14 defendants to remain in the courthouse from 9 to 5?" And I
15 responded, "I wouldn't mind if you all agree on somebody to be
16 a spokesperson for them. That's okay." Several defendants
17 indicated assent.

18 On the morning of November 19 the Court asked the
19 defendants, "Do you all have somebody in the event of
20 questions?" And Mr. Kolenich responded that they did.
21 Mr. Cantwell was in the courtroom in both of those instances
22 and didn't say anything to the contrary. And defendants have
23 had one or more representatives on hand for every juror
24 question received to date.

25 Anyway, Mr. Cantwell, that's why the Court did what

Sines, et al. v. Kessler, et al., 3:17CV72, 11/23/2021

1 it did and didn't have you brought up each time. I don't think
2 the Court entered any order that would be to your disadvantage
3 that wasn't agreed to. Even though all the defendants don't
4 agree on everything, I think on anything that the Court
5 instructed the jury, it would not have been to your
6 disadvantage.

7 MR. CANTWELL: Thank you, Judge.

8 THE COURT: Could I see Mr. Kolenich and Ms. Kaplan?
9 Everybody else can leave.

10 (Recess, 12:18 p.m. to 2:17 p.m.)

11 THE COURT: Okay. Well, I have a note from the jury
12 which I consider that they -- the jury considers it has arrived
13 at a verdict in the case, and I have instructed the jury to
14 complete the form and notify us to be brought.

15 This is the note: "We have unanimously decided on
16 Claims 3, 4, 5 and 6. After reviewing the final jury
17 instructions and discussing claims 1 and 2 at length, we are
18 deadlocked. We do not believe this will change."

19 Anything before I call the jury?

20 MR. SMITH: Your Honor, that sounds to me like --
21 Josh Smith -- that sounds to me like a jury that has seriously
22 considered the case, and anything the Court tells it is not
23 going to result in further progress.

24 THE COURT: I intend to --

25 MS. DUNN: Your Honor --

Sines, et al. v. Kessler, et al., 3:17CV72, 11/23/2021

1 THE COURT: Yes.

2 MS. DUNN: Your Honor, we would like an opportunity
3 to discuss briefly.

4 THE COURT: What I propose to do is call the jury,
5 publish what they have done, send the jury back to the jury
6 room, and hear any argument.

7 Do you mean you want to talk about something right
8 now?

9 MS. DUNN: We just want one minute to discuss.

10 THE COURT: All right.

11 MS. DUNN: Can we understand your proposal?

12 THE COURT: I was going to call the jury, have it
13 report, because they consider they have reached their verdict,
14 and then ask the jury to retire to the jury room, take up any
15 motions you all might have before the jury is discharged or see
16 what other proceeding we might have.

17 MS. DUNN: Your Honor, let us just discuss for a
18 minute, if you would. Court's indulgence.

19 THE COURT: Yes.

20 MS. DUNN: Thank you.

21 (Pause.)

22 MS. DUNN: Plaintiffs request that the jury receive
23 an *Allen* charge on Counts 1 and 2.

24 THE COURT: All right. I will say this: On the
25 instruction that I sent them, you will recall they said they

Sines, et al. v. Kessler, et al., 3:17CV72, 11/23/2021

1 could not reach -- they indicated they had reached a unanimous
2 verdict on 1, 2, and 3. And I sent the note back and I told
3 them you should deliberate in an effort -- I can't quote it --
4 on all three, on all the counts. And normally I would tell the
5 jury -- I'm not deciding -- but I would tell the jury if they
6 report -- to go back and deliberate. And if, after further
7 deliberations, they still do not feel they can reach a verdict,
8 to report back. I wouldn't make them stay. And it seems to me
9 they have taken that step already.

10 MS. DUNN: Your Honor, two things in response. The
11 first is we don't believe the jury has received the *Allen*
12 charge that is standard.

13 THE COURT: Well, I don't know. The Fourth Circuit
14 is not on board with a lot of the more --

15 MS. DUNN: We understand that, Your Honor.

16 But the second thing is that we would also ask the
17 jury to be encouraged, with regard to Counts 1 and 2, as Your
18 Honor has said, to make findings defendant by defendant. And
19 so we would ask, as to Counts 1 and 2, to have the jury charged
20 in that fashion.

21 THE COURT: Okay. We will call the jury back.

22 MS. DUNN: Your Honor, we have a proposed charge that
23 we can get.

24 THE COURT: We have one. I don't know whether I have
25 it in here or not.

Sines, et al. v. Kessler, et al., 3:17CV72, 11/23/2021

1 MS. DUNN: And we would ask that it be included to
2 encourage the jury, in case this is what is holding them up, to
3 consider defendant by defendant.

4 THE COURT: Well, that's what the instruction calls
5 for.

6 MR. KOLENICH: Your Honor, we think the instructions
7 already instruct them on that. Furthermore, the general
8 instructions contain what amounts to an *Allen* charge when you
9 first gave the instruction.

10 MS. DUNN: We understand, Your Honor. But the power
11 of the Court in this moment to say these things is part of why
12 the charge is given. And we think that in this case in
13 particular, because this jury is charged with going defendant
14 by defendant, we would ask for that language to be included.

15 THE COURT: All right.

16 MS. DUNN: And if Your Honor would like any proposed
17 language, we can submit that.

18 THE COURT: We've worked on a charge already, and I
19 think in accordance with Fourth Circuit law -- well, call the
20 jury.

21 **(Jury in, 2:23 p.m.)**

22 THE COURT: All right. Members of the jury, have you
23 arrived at a verdict?

24 MALE JUROR: We have.

25 THE COURT: Who is your foreperson? Where is the

Sines, et al. v. Kessler, et al., 3:17CV72, 11/23/2021

1 foreperson?

2 Would you hand the verdict form to the marshal?

3 (Pause.)

4 All right. I'll ask the clerk to publish the
5 verdict.

6 THE CLERK: Ladies and gentlemen, is this your
7 verdict?

8 Civil Action Number 3:17-cv-72, Elizabeth Sines and
9 others versus Jason Kessler and others: First claim, 42 U.S.C.
10 Section 1985(3), no verdict.

11 Second claim, 42 U.S.C. Section 1986, no verdict.

12 Third claim, civil conspiracy, did the plaintiffs
13 prove by a preponderance of the evidence each element of the
14 Virginia state law civil conspiracy claim? Yes.

15 If you answered yes to the first part of this
16 question, please indicate which of the following defendants you
17 find by a preponderance of the evidence were members of that
18 conspiracy. All defendants.

19 Your Honor, would you like me to name every
20 defendant?

21 THE COURT: I do not think it necessary for her to
22 read the names. Does anyone wish those names to be read?
23 You've got the form. They're all listed.

24 MR. SMITH: No, Your Honor.

25 THE CLERK: Potential damages for first three claims:

Sines, et al. v. Kessler, et al., 3:17CV72, 11/23/2021

1 For each plaintiff you found for on Claim 3, please state the
2 total compensatory damages that will fully and fairly
3 compensate the plaintiffs for the injuries sustained for the
4 conspiracy: Natalie Romero, \$1; April Muñiz, \$1; Thomas Baker,
5 \$1; Elizabeth Sines, 0; Marissa Blair, \$1; Marcus Martin, \$1;
6 Chelsea Alvarado, \$1; Seth Wispelwey, 0; Devin Willis, \$1.

7 If you found for plaintiffs as to Claim 3, do you
8 find punitive damages should be awarded against at least one
9 defendant? Yes.

10 You answered yes to the first part of this question.
11 Please state the following lines the punitive damages, if any,
12 you are assessing against each defendant: Jason Kessler,
13 \$500,000; Richard Spencer, \$500,000; Christopher Cantwell,
14 \$500,000; James Alex Fields, \$500,000; Robert Azzmador Ray,
15 \$500,000; Nathan Damigo, \$500,000; Elliot Kline, \$500,000;
16 Matthew Heimbach, \$500,000; Matthew Parrott, \$500,000; Michael
17 Hill, \$500,000; Michael Tubbs, \$500,000; Jeff Schoep, \$500,000;
18 Vanguard America, \$1 million; League of the South, \$1 million;
19 Identity Evropa, \$1 million; Traditionalist Worker Party, \$1
20 million; National Socialist Movement, \$1 million.

21 Fourth claim: Racial, religious, or ethnic
22 harassment or violence. Plaintiffs Natalie Romero and Devin
23 Willis brought a claim under Virginia code -- under Virginia
24 racial, religious, or ethnic harassment or violence statute.
25 Please indicate any and all defendants against whom you find

Sines, et al. v. Kessler, et al., 3:17CV72, 11/23/2021

1 the plaintiff proved their claim: Jason Kessler, Richard
2 Spencer, Elliot Kline, Robert Azzmador Ray, and Christopher
3 Cantwell.

4 For each plaintiff who you found for as to Claim 4,
5 please state the total compensatory damages that will fully and
6 fairly compensate plaintiff for the resulting injuries:

7 Natalie Romero, \$250,000, Devin Willis, \$250,000.

8 If you found for at least one plaintiff as to Claim
9 4, do you find that punitive damages should be awarded against
10 at least one defendant? Yes.

11 If you answered yes to the first part of this
12 question, please state the following lines the total punitive
13 damages you are assessing against any such defendant: Jason
14 Kessler, \$200,000; Richard Spencer, \$200,000; Elliot Kline,
15 \$200,000; Robert Azzmador Ray, \$200,000; Christopher Cantwell,
16 \$200,000.

17 Plaintiffs Natalie Romero, April Muñiz, Seth
18 Wispelwey, Elizabeth Sines, Marissa Blair, Marcus Martin, Devin
19 Willis also bring a claim under Virginia Code Section 8.01-42.1
20 against defendants James Alex Fields, Jr. Please indicate
21 whether you find that the plaintiff proved their Virginia Code
22 Section 8.01-42.1 claim against James Alex Fields, Jr. Yes.

23 If you found liability against James Alex Fields, Jr.
24 as to Claim 4, please state the total compensatory damages that
25 will fully and fairly compensate the plaintiff for the

Sines, et al. v. Kessler, et al., 3:17CV72, 11/23/2021

1 resulting injuries: Natalie Romero, 0; April Muñiz, 0; Seth
2 Wispelwey, 0; Elizabeth Sines, 0; Marissa Blair, 0; Marcus
3 Martin, 0; Devin Willis, 0.

4 If you found for at least one plaintiff in question
5 8, do you find that punitive damages should be awarded? No.

6 Fifth claim, assault or battery. Plaintiff Natalie
7 Romero, April Muñiz, Thomas Baker, Elizabeth Sines, Marissa
8 Blair, and Marcus Martin bring a claim for assault or battery
9 against Defendant James Alex Fields, Jr. Did those plaintiffs
10 prove by a preponderance of the evidence each element of their
11 claim for assault and battery? Yes.

12 For any plaintiff who you found for as to Claim 5,
13 please state the total compensatory damages that will fully and
14 fairly compensate the plaintiff for the resulting injuries:
15 Natalie Romero, \$217,715; April Muñiz, \$108,000; Thomas Baker,
16 \$318,575; Elizabeth Sines, 0; Marissa Blair, \$2,000; Marcus
17 Martin, \$156,987.

18 If you found for at least one plaintiff as to Claim
19 5, do you find that punitive damages should be awarded? Yes.
20 If you answered yes to the first part of this question, please
21 state on the following line the total punitive damages you are
22 assessing against Defendant James Alex Fields for these claims:
23 \$6 million.

24 Claim 6, intentional infliction of emotional
25 distress. Plaintiffs Natalie Romero, April Muñiz, Thomas

Sines, et al. v. Kessler, et al., 3:17CV72, 11/23/2021

1 Baker, Elizabeth Sines, Marissa Blair, and Marcus Martin bring
2 a claim for intentional infliction of emotional distress
3 against Defendant James Alex Fields, Jr. Did the plaintiffs
4 prove by clear and convincing evidence each element of their
5 claim for intentional infliction of emotional distress? Yes.

6 For each plaintiff who you found for as to Claim 6,
7 please state the total compensatory damages that will fully and
8 fairly compensate the plaintiff for the resulting injuries:

9 Natalie Romero, \$155,715; April Muñiz, \$50,000; Thomas Baker,
10 \$246,757; Elizabeth Sines, \$50,000; Marissa Blair, \$100,000;
11 Marcus Martin, \$98,987.

12 If you found for at least one plaintiff as to claim
13 6, do you find that punitive damages should be awarded? Yes.

14 If you answered yes as to the first part of this
15 question, please state on the following line the total punitive
16 damages you are assessing against Defendant James Alex Fields,
17 Jr. for these claims: \$6 million.

18 Signed, foreperson, on November 23rd, 2021.

19 Do you and each of you agree upon this verdict, so
20 say you all?

21 ALL JURORS: Yes.

22 THE COURT: All right. Members of the jury, I'm
23 going to ask you -- I have your note -- is there any juror that
24 thinks that further deliberations would result in you being
25 able to reach a verdict with regard to the first two counts, 1

Sines, et al. v. Kessler, et al., 3:17CV72, 11/23/2021

1 and 2?

2 Do you think -- do you understand that I'm asking you
3 if you should further deliberate, do you believe that you could
4 possibly reach a verdict as to Counts 1 and 2, even considering
5 just one defendant at a time? If you do, raise your hand.

6 No one raises their hand, and so I respect the
7 verdict of the jury.

8 I am going to ask you -- I have to ask you to go back
9 to the jury room. It won't take long. Go back to the jury
10 room and we'll call you back and discharge you, but you may go
11 back to the jury room.

12 **(Jury out, 2:38 p.m.)**

13 MS. KAPLAN: Your Honor, can I raise something right
14 now?

15 THE COURT: Do you all have anything you want to say?

16 MS. KAPLAN: Just one thing, Your Honor, unless my
17 colleagues tell me otherwise. There have been entries of
18 default entered for the following seven defendants, Your Honor:
19 Andrew Anglin; Moonbase Holdings, LLC; East Coast Knights of
20 the KKK; Fraternal Order of the Alt-Knights; Augustus Sol
21 Invictus; Loyal White Knights of the KKK; and the Nationalist
22 Front. We will be filing the necessary motions for default
23 judgment, Your Honor, in the next several days. We just wanted
24 you to be aware of that.

25 THE COURT: Okay. Anything else?

Sines, et al. v. Kessler, et al., 3:17CV72, 11/23/2021

1 At this point I do not propose to give the Allen
2 charge.

3 MS. KAPLAN: We understand.

4 THE COURT: I would have told the jury -- I was going
5 to tell the jury that if they got back there and thought they
6 could not --

7 MS. KAPLAN: I think that's it. Right?

8 MS. DUNN: Yes.

9 MS. KAPLAN: We're okay.

10 THE COURT: Anything from this side?

11 MR. CAMPBELL: Yes, Your Honor. I would just move at
12 the appropriate time for the Court to reduce the punitive
13 damage awards under Virginia Code 8.01-38.1 to the \$350,000 cap
14 per plaintiff.

15 THE COURT: I'm sorry, I just didn't hear.

16 MR. CAMPBELL: Your Honor, at the appropriate time --
17 be it now or post-trial motion -- we would just move the Court
18 to reduce the punitive damages awards for each plaintiff in
19 accordance with Virginia Code 8.01-38.1 to the \$350,000 cap.

20 MR. SMITH: Your Honor, we'll also be making a
21 similar motion with regard to --

22 THE COURT: Well, I think the verdict form -- I think
23 we need to copy -- give everybody a copy of the verdict form,
24 and you all can file any written motions.

25 MS. KAPLAN: We'd like -- obviously, Your Honor, like

Sines, et al. v. Kessler, et al., 3:17CV72, 11/23/2021

1 an opportunity to respond to that.

2 THE COURT: All right.

3 MR. SMITH: Well, I didn't finish yet. I just wanted
4 to say we'll be making the necessary motions to have the
5 punitive damages reduced in light of the Supreme Court's
6 decision in *State Farm v. Campbell*.

7 MS. KAPLAN: We're happy to deal with that as well,
8 Your Honor.

9 THE COURT: Okay. Well, the Court will entertain any
10 written motions.

11 MS. KAPLAN: One more question, Your Honor. We'd
12 request permission, Your Honor, subject to pseudonymity,
13 without revealing any names, to speak to the jurors afterwards,
14 particularly about counts --

15 THE COURT: I have a statement I'm going to read to
16 the jury about that.

17 MS. KAPLAN: Thank you, Your Honor.

18 THE COURT: Just for the benefit of the sketch
19 artist, one of the jurors has expressed concern. I am going to
20 tell the jury that you will not be -- are not sketching the
21 jurors.

22 Do you understand?

23 MALE SPEAKER: Understood, Your Honor.

24 THE COURT: Did she hear me?

25 THE CLERK: He said yes.

Sines, et al. v. Kessler, et al., 3:17CV72, 11/23/2021

1 THE COURT: All right. Call the jury back.

2 Before the jury comes back, I do want to thank all
3 the attorneys in the case. It's been a very civil proceeding.
4 I mean, it had the potential of being not so civil, but I have
5 not been in any case of any consequence in which I felt the
6 attorneys behaved more professionally, and particularly given
7 the number on either side and the conflicts there are. I know
8 it's a credit to the legal profession and I personally
9 appreciate it very much, because there's nothing worse than
10 trying a case where the lawyers are at each other's heels all
11 the time. It's been a long, hard case, and it was made better
12 by the professionalism of the attorneys. And I think -- and
13 also those who represented themselves acquitted themselves well
14 also. So I think it was -- all in all, no one could have asked
15 for a trial to go any better -- a trial with all the potential
16 problems this one had. So I feel pretty good about it myself.

17 MR. CAMPBELL: Thank you, Your Honor.

18 MS. DUNN: Thank you, Your Honor. We appreciate it.

19 MS. KAPLAN: Your Honor, there's very little that
20 matters more to me. So we very much appreciate that.

21 THE COURT: Thank you.

22 **(Jury in, 2:45 p.m.)**

23 THE COURT: All right. You may be seated. Members
24 of the jury, I personally want to thank you for the hard work
25 you've put in these last four weeks and the dedication you've

Sines, et al. v. Kessler, et al., 3:17CV72, 11/23/2021

1 shown to doing your duty. I think there aren't any jurors in
2 the history of the Western District of Virginia who have
3 endured a case as long as you have. And so not only do I thank
4 you, but your community owes you a debt of gratitude too.
5 You've done yeomen-like work, and everyone should appreciate
6 the hard work and effort you put in in trying to decide this
7 case. It was really a tremendous effort you put out, and we
8 really do appreciate it. I wish you from here on good health.
9 And again, just personally I thank you for the consideration
10 you gave to this case.

11 I'm going to read this instruction to you. I want to
12 remind you and the parties of the Court's efforts to preserve
13 your anonymity during and after the deliberation process. The
14 Court has ordered that only relevant court staff, the parties,
15 and their counsel be provided your names and identifying
16 information. The parties and their counsel have been ordered
17 not to disclose your names or identifying information to any
18 other person without prior authorization of the Court. This
19 order applies both during and after trial. Although the
20 parties and their counsel are prohibited from revealing your
21 identifying information, you may disclose that you were a juror
22 in this case to others, including to members of the media, if
23 you so desire. A list of media contacts will be made available
24 to you at the request of the outlets covering this case. But
25 you should not feel under any obligation to talk to the media

Sines, et al. v. Kessler, et al., 3:17CV72, 11/23/2021

1 or anyone else about the case. If you wish, you may refuse all
2 requests for interviews or comments.

3 Regardless, if you do wish to give an interview or
4 comment, you may only disclose your own information. You may
5 not reveal the personally identifying information of your
6 fellow jury members, nor may you give any information with
7 respect to the vote of any other juror.

8 And also you may have noticed there is a sketch
9 artist in the courtroom, but the artist is under -- came in
10 under an agreement that they would not sketch the jury.

11 So that should not identify you in any respect. But
12 again, I'm going to excuse you at this time and thank you again
13 very much. You may be excused. And we'll recess court.

14 **(Jury out, 2:48 p.m.)**

15 Anything else?

16 MS. DUNN: No, Your Honor, thank you very much.
17 We're very grateful.

18 MR. SMITH: I thought you wanted to --

19 THE COURT: I didn't hear what you said.

20 MR. SMITH: I thought opposing counsel was interested
21 in relitigating the *State Farm v. Campbell* precedent in Supreme
22 Court. I got a feeling that she wanted -- she had a glint in
23 her eye. But I don't know. Maybe not.

24 MS. DUNN: Thank you, Your Honor.

25 MS. KAPLAN: Thank you, Your Honor.

Sines, et al. v. Kessler, et al., 3:17CV72, 11/23/2021

1 THE COURT: Thank you all.

2 MR. SMITH: Thank you, Judge.

3 (Proceedings concluded, 2:49 p.m.)

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Sines, et al. v. Kessler, et al., 3:17CV72, 11/23/2021

C E R T I F I C A T E

I, Lisa M. Blair, RMR/CRR, Official Court Reporter for the United States District Court for the Western District of Virginia, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a correct transcript of the proceedings reported by me using the stenotype reporting method in conjunction with computer-aided transcription, and that same is a true and correct transcript to the best of my ability and understanding.

I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

/s/ Lisa M. Blair

Date: November 23, 2021